Tracts of Connecticut Woman Suffrage Association. No. 1.

LEGAL DISABILITIES

OF

MARRIED WOMEN

IN CONNECTICUT.

BY

GEORGE A. HICKOX,

LITCHFIELD, CONN.

This Tract may be obtained from Case, Lockwood & Brainard, Hartford, Conn.

Price, $16.50 per thousand.

HARTFORD:
PRINTED BY CASE, LOCKWOOD & BRAINARD.
1871.

By the Constitution of the Connecticut Woman Suffrage Association, all persons subscribing to the Constitution and paying one dollar, become members of the Association.

The officers of the Association for the year commencing September 9, 1870, are as follows:

President.

Rev. Dr. N. J. BURTON, Hartford.

Vice Presidents.

Rev. Dr. JOSEPH CUMMINGS, Middletown.
Rev. Dr. C. E. STOWE, Hartford.
Mrs. H. B. STOWE, Hartford.
Rev. W. L. GAGE, Hartford.
TIMOTHY M. ALLYN, Hartford.
JOHN HOOKER, Hartford.
Rev. C. C. CARPENTER, Derby.
Mrs. THOMAS ELMES, Derby.
Rev. Dr. T. T. STONE, Brooklyn.
Brig. Gen. B. S. ROBERTS, New Haven.
CHARLES CHENEY, South Manchester.
WARD CHENEY, South Manchester.
Rev. W. W. BELDEN, Bristol.
GEORGE A. HICKOX, Litchfield.

Secretary.

Miss F. E. BURR, 788 Main St., Hartford.

Treasurer.

JOHN HOOKER, Hartford.

Executive Committee.

Mrs. JOHN HOOKER, Hartford.
Mrs. MARSHALL JEWELL, Hartford.
Miss ESTHER PRATT, Hartford.
Mrs. J. G. PARSONS, Hartford.
Mrs. WM. B. SMITH, Hartford.
JOHN IVES, Hartford.
Rev. PHŒBE HANAFORD, New Haven.
CHARLES ATWATER, New Haven.
Rev. OLYMPIA BROWN, Bridgeport.

LEGAL DISABILITIES

OF

MARRIED WOMEN IN CONNECTICUT.

So many incorrect and incomplete statements of the law of Connecticut regarding married women have found their way into print that there has arisen an obvious necessity for reducing that law to some convenient form for reference. Imperfect as the following *resumè* may be, it will probably give a better idea of the legal relation between man and wife as it exists in this State, than any to which those who have not made a special study of the matter will have been able to arrive.

The first mistake into which a person, not a lawyer by profession, is apt to fall in endeavoring to inform himself on legal subjects, is that of supposing that the whole, or at least the most important part, of our law can be found in the statute book. Such is not the case. The basis of our jurisprudence is what is called the *common* law, to be gathered from the practice and decisions of the English and American courts for hundreds of years past. It is sometimes called the *unwritten* law from the fact that no authorized code or digest has ever been made of it, as was the case with the civil law under Justinian, and with the French law under Napoleon. The common law has been added to and changed by *statute* law; but, except as so modified, remains in force as the law of the land. Occasional uncertainty arises as to what that law is, owing to a conflict of decisions; but, in the absence of such conflict, decisions of the English and American courts are generally considered as establishing the law for us as well as for them; and all cases decided in our Connecticut courts of highest resort are of binding and conclusive authority, until the law is itself changed by the legislature, or the decisions over-ruled in the court where they were made. It so happens that all the alleviations of our

marriage law are to be found in a few pages of our Revised Statutes, while the far more important, unrepealed provisions of the common law are scattered through numerous "reports," and only briefly summarized in the text books. Hence an unprofessional reader is more apt in this than in other branches of the law to get erroneous impressions regarding its real condition.

The subject is naturally divided into three heads, which we arrange in the order of their importance:

I. The wife's personal subjection to the husband.

II. Her want of legal authority over their children.

III. Her property.

I.—THE WIFE'S PERSONAL SUBJECTION.

The legal rights of the husband to the custody of the person, to the strict obedience, and to the services, of the wife, are almost precisely the same that the father has to the custody, obedience, and services of his minor child. His duty of maintenance is the same; and only gross misconduct, similar to that which justifies the minor in repudiating the parental authority, or third persons in interfering in its behalf, will justify the wife in repudiating the marital authority, or the interference of friends in her behalf.

I. The husband's right to the custody of his wife's person.

The husband has the sole right to choose the place of residence, the manner of life, the social and even the religious connections of the family—for the wife as well as for his children. He may forbid her attending the church of which she is a member,* and may interdict all intercourse with her relatives or with his. † Nor will she be justified in leaving him unless he is guilty of such misconduct as would entitle her to a divorce. ‡

---

* In *Lawrence* vs. *Lawrence*, (3 Paige, 272) the wife being a member of the Presbyterian Church, the husband, who had quarrelled with that church, would not allow her to attend it. Chancellor Walworth, in rendering the decision refusing her a divorce *a mensa et thoro*, says, "Although it was an act of great unkindness and of unreasonable oppression on the part of the husband to use his marital power in separating his wife from the church of which she was a member, and with which she preferred to worship, I have no hesitation in saying that she mistook her duty in not submitting to the oppressor."

† 1 Bishop on Mar. and Div., § 758. In *Shaw* vs. *Shaw*, decided in our Supreme Court, in 1845, Ch. Justice Williams says in giving the opinion of the court: "Again, influenced by the same evil passion, [jealousy] the defendant has been unwilling his wife should visit her own mother, and her mother-in law, and other friends, and has forbidden such intercourse; and once he turned the mother-in-law out of the house, without cause, and forbade his wife to leave the house. This conduct is certainly harsh, if not cruel; but, *as the husband must have the right to say who shall be admitted to his house, and in some measure, to regulate the intercourse of his wife, the court cannot draw a line by which his authority can be restrained.*"

‡ 1 Bishop on Mar. and Div., § 569.

In case the wife leaves the husband, except for legal cause (*elopes*, as the law terms it), three ways of compelling her return are open to him:

1st. He may seize her person wherever he finds it.* The works of our Connecticut lawyers are explicit on this point. Chief Justice Reeve says, "It seems to be well settled that if a wife elope and go away from her husband without cause, the husband may seize upon her person and bring her home." † In Judge Dutton's revision of Chief Justice Swift's Digest of the Laws of Connecticut the power of the husband over the wife is concisely stated as follows: "The husband has power and dominion over his wife, as he is responsible for her actions; he may control, regulate, and restrain her conduct, and keep her *by force* within the bounds of duty, and under due subjection and subordination."‡

2d. He may bring a civil suit against those advising her flight, or harboring her afterwards with knowledge of the facts ‖ What constitutes *harboring* in such cases is thus defined by the court in a case decided in the New York Supreme Court in 1848: "The husband has a right to the society and assistance of his wife, and whoever persuades or entices her to separate herself from him, and thus deprives him of that right is liable in this action. Thus, if the defendant had opposed the plaintiff in an attempt to take his wife home; or had refused him access to his wife while she was remaining in his house; if he had

---

* "The husband," says Lord Mansfield, "has in consequence of his marriage, a right to the custody of his wife, and whoever detains her from him, violates his right, and he has a right to seize her wherever he finds her." See 8 Dowl. P. C., 682 It was held in a North Carolina case, decided in 1849, that a husband might lawfully use force to regain possession of his wife from one with whom he has reason to believe she had committed, or is about to commit, adultery. *State* vs. *Craton*, 6 Iredell, 164. This right is also incidentally recognized in the cases of *Shunneman* vs. *Palmer*, 4 Barb., 227, and *Turner* vs. *Estes*, 3 Mass., 318. It would seem from the case of *Lewis* vs. *Ponsford*, (8 C. & P., 687) that a husband would be justified even in forcibly entering the premises of a third person to get possession of the person of a wife harbored there.

† Dom. Rel., 66.

‡ 1 Sw. Dig., 40.

‖ By an old statute of Edward I., the person so interfering was liable to fine and imprisonment (3 Bl. Com., 139). "The old law was so strict in this point" says Blackstone, "that if one's wife missed her way upon the road, it was not lawful for another man to take her into his house, unless she was benighted and in danger of being lost or drowned, but a stranger might carry her behind him on horseback to market, to a justice of the peace for a warrant against her husband, or to the spiritual court to sue for a divorce." In *Winsmore* vs. *Greenbank*, (Willes, 577,) the husband recovered £3 000 damages against the defendant who harbored and concealed the wife and advised her not to return to him. The Court say, "every moment that a wife continues absent from her husband (without justifiable cause) without his consent, is a new tort, and every one who persuades her to do so, does a new injury, and cannot but know it."

attempted to conceal her from her husband; in short, if he had done anything with a view to deprive the plaintiff of the company or service of his wife, it would undoubtedly constitute such a *harboring* as the law contemplates when it gives this action to the husband." * This form of remedy has been sanctioned in very recent cases and enforced by very heavy verdicts.†

3d. The husband may retain his *eloping* wife's property, and refuse her a maintenance; he may retain their children, and refuse her access to them; and he can seize any property she may be so fortunate as to acquire subsequently. In short, such is her state of destitution, and so manifold her disabilities, that he can rely on them to compel her return, unless, indeed, his person has become so odious to her as to render the harshest and most hopeless poverty preferable to his society.

It is not easy to determine precisely what coercive measures the husband may take to enforce the legal duty of the wife while living with him. Judge Swift maintains, as we have seen above, that "he may control, regulate, and restrain her conduct, and keep her *by force* within the bounds of duty, and under due subjection and subordination." The English authorities even go to the length of permitting the husband to keep the wife in confinement for an indefinite period unless she appear willing to submit to his authority. ‡

---

* *Schuneman* vs. *Palmer*, 4 Barb., 227.

† *Barnes* vs. *Allen*, 30 Barb., 663. In a late New York case (*Scherpf* vs. *Szaderszky*, 4 E. D. Smith, 110) a verdict of $10,000 was rendered against the person who enticed away the plaintiff's wife, although no crim. con. was charged.

‡ "There can be no question respecting the common law right of a husband to restrain his wife of her personal liberty, with a view to prevent her going into society of which he disapproves, or otherwise disobeying his rightful authority." 1 Wend. Bl., 445, note. "He may in the plenitude of his power, adopt any act of physical coercion which does not endanger the life or health of the wife or render cohabitation unsafe." 4 Petersdorf's Ab., 21, note. On this point the decision of Justice Coleridge *in re Cochrane* (8 Dowl. P. C., 632), is a leading case. Mrs. Cochrane had left her husband in 1836 and resided abroad with her mother for four years, conducting herself with entire propriety. Obtaining possession of her person by strategem, he confined her to his house in England. She avowed her determination to leave him again on the first opportunity, and the court decided that under such circumstances the husband was justified in keeping her in confinement. "The principle on which it [the law] proceeds, is broad and comprehensive: it has respect to the terms of the marriage contract *and the infirmity of the sex*. For the happiness and honor of both parties, it places the wife under the guardianship of the husband, and entitles him for the sake of both, to protect her from the danger of unrestrained intercourse with the world, by enforcing cohabitation and a common residence. * * * It is urged that I am sentencing her to perpetual imprisonment. Cases of hardship will arise under any general rule, and so long as there are, unfortunately, ill-assorted unions, there will be cases in which wives will feel it hard to be compelled to reside with their husbands. * * * But if there is anything painful in the present state of things, she cannot properly complain of it, for it arises from her own breach of duty, and she may end it whenever she will cheerfully and frankly resolve on performing the contract she has entered into." In the

A remarkable case illustrative of the husband's power over the wife's person was decided in our Supreme Court in 1845.* This was a divorce suit brought by the wife on the ground of intolerable cruelty, the so-called *omnibus* clause not having then been introduced into our statute. The petitioner proved that her husband was in the habit of using the most abusive language towards her, and that he had repeatedly accused her of adultery. He forbade her having any intercourse with her friends; he turned the mother of her former husband (who had come to see her when she was sick) out of the house; on one occasion he forbade the petitioner to leave the house and endeavored to fasten her into it; and he otherwise behaved in a most brutal manner towards her. † The court held that whatever might have been the unreasonableness and "indelicacy" of his conduct, it was not *unlawful*, and refused to grant a separation. ‡

The authority of the husband as the legal custodian of the person of the wife is so absolute, and in general so undisputed, that cases regarding it are not of so frequent occurrence in the books as those concerning their respective rights of property. Hence, in order to show how completely the law will, in case of necessity, vindicate that authority, judicial decisions and legal opinions have been cited much more fully than will be necessary on other branches of the subject.

II. The husband's right to the services of the wife.

Whatever the wife earns in the service of the husband belongs to him absolutely. Whatever she earns in the service of others vests in him under the law regulating property coming to her from any other source. § "In general, whatever she earns, she earns as his servant, and for him; for in law, her time, and her labor, as well as her money, are his property." ‖

---

absence of any American decisions, Bishop, in his works on Criminal Law and Marriage and Divorce, doubts whether our courts would go to the length those of England have done in constituting the husband not only judge and jury but jailer in cases of the wife's disobedience. He does not, however, deny him the right to "restrain her locomotion" under certain circumstances: 1 Crim. Law, 775; 1 Mar. and Div., 756.

* *Shaw* vs. *Shaw*, 17 Conn., 189, heretofore cited.

† He frequently compelled her to occupy the same bed with him under circumstances which endangered her health, and on two occasions took her, by force, from the bed of his step-daughter, to which she had retired, and compelled her to occupy a bed with himself.

‡ Subsequently, however, this grossly abused lady obtained a divorce from the legislature.

§ Rev. Stats., 303, § 19. ‖ 1 Pars. Cont., 345.

That the parent should be entitled to the services of a minor child is eminently just; he only receives a *quid pro quo.* Indeed the child earns its father, on an average, far less than it costs him, from the time of its birth till it arrives at majority. Such is not the case with the wife. Most Connecticut women marry at maturity, and spend the prime of their lives in the service of their husbands. At the risk of their lives, and often to the ruin of their health, they bear them children. Over those children they have no legal control, except such delegated power as their husbands choose to allow. They work more hours a day than the hired servant, and were that labor recompensed as the labor of women other than wives is recompensed, it would ensure them a handsome support for their declining years. Yet the law offers them no pretense, even, of such a recompense.

Incident to the husband's right to the wife's services is her right to a decent maintenance in accordance with their condition in life. The law considers her entitled to necessary housing, food, drink, clothing, and medicine. She may also have the services of a lawyer to put her husband under bonds to keep the peace, if he beat her, or threaten to beat her; but not to have him fined,* nor to procure a divorce† from him, for such abuse.

Out of the husband's right to the wife's services grows his right of action in case of injury to the wife's person, wherein he may recover damages for loss of service and for attendance and medicine supplied during her illness. It is also upon this supposed loss of service that the husband's right of action for the seduction, for the enticing away, or for the harboring of his wife, is grounded. But although in such cases the loss of service forms the ground of action, it does not limit the amount of damages. Heavy "vindictive" damages are allowed the husband for the presumed injury to his feelings, loss of wife's society, &c.

III. THE WIFE IS BY LAW DISABLED FROM PROTECTING HER OWN INTERESTS.

The husband's absolute control over the person of the wife is further secured by her legal inability to become a party to any contract whatsoever.‡ When living with the husband, and

* *Grindelt* vs. *Godmond*, 5 A. & E., 755. † *Shelton* vs. *Pendleton*, 18 Conn., 417.

‡ Except such contracts as have direct reference to her "separate" property, should she be possessed of any.

managing his household, the law implies an agency, by virtue of which she can make contracts on his behalf for household supplies. Should he become dissatisfied with her management, however, he can at any time terminate this implied agency and stop his liability, by giving notice to the parties with whom she is in the habit of dealing;* so that the common impression that a wife can persist in running her husband in debt contrary to his wishes, is a mistake. The inability to contract is more complete in the case of married women even than in that of minors. The contracts of the latter may be ratified on their coming of age, whereas those of the former are absolutely void. The practical result of this disability is to make it impossible for a wife to engage or continue in any business without the husband's consent, and greatly trammels her action where such consent is given.

Not only can the wife make no contracts, and therefore undertake no business, without the husband's consent, she cannot even protect her person, her reputation, or her property by bringing suits for injuries to them. All such suits are brought in the names of husband and wife jointly, but she has no control over them, whatsoever; he uses her name, indeed, but may do so without her consent, or even contrary to her wishes. So entire is his authority over the matter, that if he sees fit to use force for securing custody of her person or obedience to his commands, both he and his agents are screened from civil suit on her behalf. † In fact, the married woman's disability in this respect is more complete than that of the minor, who can sue by "next friend."

The damages recovered by the husband for injuries to the person, reputation, and property of the wife, vested in him absolutely, at common law; but by our present statute only the use of the same would belong to him, as is the case with other

---

* "Ordinarily he [the husband] will be presumed to assent to her [the wife's] making such purchases as in the conduct of the domestic concerns are proper for her management and supervision; but he is at liberty to withhold such assent, and destroy such presumption, by an express prohibition; and if he do so, no one, having notice thereof, may trust the wife in reliance upon his credit, unless the husband so neglects his own duty that supplies become absolutely necessary, according to their condition." Woodruff J. in *Keller* vs. *Phillips*, decided in the New York Court of Appeals in 1868 (39 N. Y., 355).

† About a year since, a husband procured the publication in a newspaper in Litchfield county of a notice charging his wife with adultery, and with having given birth to an illegitimate child. The publication was probably with a view to blacken her character and facilitate his obtaining a divorce: nevertheless our law left her entirely without legal power to redress so flagrant an injury to her reputation.

property accruing to the wife during marriage. By a reciprocal provision of the law, suits for injuries committed by the wife to the persons or property of others must be brought against husband and wife jointly; and the property or persons of both, or either, may be taken in satisfaction of judgments rendered against them in such suits. The courts of Connecticut are less liberal than those of England to the wife when imprisoned on civil process. The latter discharge the wife on motion, if she has no property; whereas, by our practice, she must suffer confinement and procure her release like any other imprisoned defendant. *

For her criminal acts a married woman is alone liable. The control the husband is supposed to exercise over the wife is so great, however, that all crimes (except treason, murder, and keeping a house of ill-fame), committed by her in his presence, are presumed to have been done under such coercion as to remove all moral responsibility on her part, and he only will be punished for them. She will be acquitted in such case, unless it is proved affirmatively that she acted of her own free will and not under his direction. Should a married woman be prosecuted and convicted of crime, her husband is not liable for payment of fine or costs; † and it would seem that he would not be liable for the expense of her defence, even if he himself instigated her prosecution. ‡

IV. The unequal legal provisions for enforcing the respective duties of husband and wife.

It is entirely characteristic of the existing law of marriage that while the most arbitrary authority is given the husband to secure the legal obligations on the part of the wife, no corresponding care is taken to ensure the performance of the duties of the marriage covenant on his part.

In case the wife leaves the husband for cause not justifying divorce, he may seize her by force, he may prosecute the friends who harbor her, and he has a terrible ally in her condition of utter poverty and destitution. All her property remains in his hands and cannot be removed without his consent. If

* *Hall* vs *White*, 27 Conn., 495. † *Bates* vs. *Enright*, 42 Me., 117.

‡ The only Connecticut case we have found directly in point is that of *Shelton* vs. *Hadley*, 15 Conn., 535. Here a wife was complained of by her husband for violent conduct and imprisoned on her failure to procure sureties of the peace. Her attorney sued her husband for his fees, and the Superior Court decided against his claim. The Supreme Court gave no opinion on the merits of the case.

she attempt to earn other property, or secure a salaried position, he can seize that property and demand that salary, notwithstanding his own liability for her support has ceased. On the other hand, the legal provisions to secure the wife the society of the husband are absurdly inadequate. If he is rich enough to afford her a separate maintenance, he may pension her off at any moment he sees fit. The English reports are full of decisions arising under this practice. * If he is poor enough, or cunning enough, to have no property within reach of the sheriff, his duty of maintenance practically ceases, since it cannot be enforced. Should she be totally abandoned, indeed, the wife recovers her independence; † but the shiftless husband who lives upon the services of the industrious wife still enjoys his full marital authority over her person and property.

It will be seen hereafter that the husband's right of *curtesy*, i. e., to the use of all the wife's real estate for life (provided they have had living issue), is secured to him absolutely; while the wife's right of *dower*, i. e., to the use for life of one-third her deceased husband's real estate, may be easily defeated by his conversion of that estate into personal property during his life-time, without her consent, or by his disposing of it among his heirs by deed instead of by will. ‡ In like manner the husband has the use of all the wife's personal estate during his life, whatever her will may be; § while he has the power to cut her off by will from her distributory share in his personal estate.

But the grossest inequality occurs in case of violation of matrimonial duty on the part of the husband or wife. If she commit adultery, he may have her imprisoned from two to five years in the State Prison; ‖ he may procure a divorce; or he may turn her out of doors, without becoming liable for her support. Nor will the fact that he has himself been guilty of a

---

* A deed of separate maintenance which we find in *Lewis* vs. *Ponsford*, 8 C. & P., 687, shows the kind of agreement usually made, and enumerates very carefully the marital privileges renounced: the husband covenants, "That notwithstanding their marriage, it shall be lawful for the said M. P. [the wife] at all times to live separate from him the said J. P. [the husband] in such manner as if she were sole and unmarried. And that he shall not nor will compel her to cohabit or live with him by any ecclesiastical censure or proceeding, or otherwise howsoever, nor sue or prosecute any person or persons for receiving, harboring, or cherishing the said M. P., nor use or offer any violence, force or restraint to the person of the said M. P., or molest or disturb her in her way of living or in her liberty of going or staying in such place or places as she shall think fit, but that she shall to all intents whatsoever be freed from the power, will, restraint and authority of the said J. P."

† Rev. Stats., 304, § 24, 25.

‡ *Stewart* vs. *Stewart*, 5 Conn., 317. § Rev. Stats., 304, §20. ‖ Rev. Stats., 265.

like crime affect his right to discard the wife, and refuse her a maintenance, although under such circumstances neither party would be allowed a divorce. It has been decided that even where the husband had introduced a mistress into his family and had driven out his wife, her subsequent adultery would absolve him from further liability for her support.* If the husband, on the other hand, is incontinent (unless the wife of some other man is involved), he can only be punished by a fine of seven dollars or by thirty days imprisonment in the common jail.† His wife may obtain a divorce, or she may leave him without divorce; but in the latter event he will still be entitled to the custody of her children, and of her property, even of what she may subsequently earn, and she will still be unable to make contracts or do business as an unmarried woman. Unless divorced, her only right will be that of a bare maintenance, to be enforced by suits, as for ordinary debts, on the part of those furnishing her such maintenance.

One of the greatest legal advantages of husband over wife, in case of difference or litigation between them, consists in his possession of all the property of both parties. If she commences a suit for divorce, she must begin by leaving her home, her children, and her property, in his hands. Connecticut courts, less liberal than most in that particular, will make her no allowance, even out of her own property, for employment of counsel, or for preparation and trial in a suit for divorce against her husband.‡ Even if she prove the grossest misconduct on his part, the court will allow her no costs. In case of suit for divorce by the husband against the wife, the court will, indeed, order the payment to her attorney of funds (practically a very insufficient amount) for maintaining her defence. Should he procure her prosecution for adultery, or other crime, the decisions would indicate that he would not be obliged to employ counsel or furnish funds for her defence.§ How unequal the contest must be between one possessing all the sinews of litigation, and one dependent upon charity for the maintenance of her rights, is sufficiently manifest.

---

* *Govier* vs. *Hancock*, 6 Term, 603. This decision is fully sustained by the court in the late case of *Gill* vs. *Read*, 5 R. I., 345.

† Rev. Stats., 266.

‡ *Shelton* vs. *Pendleton*, 18 Conn., 417.

§ *Shelton* vs. *Hoadley*, 15 Conn., 535.

It is much easier to trace the origin than to apologize for the continuance of such laws as we have sketched above. "At common law," says Professor Parsons, "the disability of a married woman is almost entire. Her personal existence is merged for most purposes in that of her husband. This was not so among the Anglo-Saxons, nor with the earlier Teutonic races; and must be explained as one of the effects of the feudal system." Under that system dependence was the universal rule. It was then believed that the peace and well being of the community could only be secured by the dependence of the mass of the population on certain feudal superiors, and by the further dependence of those superiors on one sovereign will. Just as it is now argued that equality and order are incompatible in the marriage state, it was then supposed that equality and order were incompatible in the political state. During the centuries that have elapsed since our marriage law took its present shape, the emancipation and then the enfranchisement of one class after another has been effected, till at last, in this country, every male citizen has his freedom and his vote. The last step in this reform has been attained at the cost of a great social and political revolution, overturning the government of the few possessed of property and intelligence, and establishing the government of the many possessed of neither. This revolution has been effected, and can only be justified, on the principle that no class or race of men, however superior by nature and education, can be trusted with the political and social control of any other class, however degraded by ignorance or inferior by nature. The theory of universal suffrage is based on the great lesson of all political experience,—that only those who suffer from abuses will ever thoroughly remedy them. Slavery would have waited long for abolition at the hands of slave-holders; and who will claim that Northern philanthropy was pure enough to have abolished slavery, or to have established negro suffrage, had there been no manifest military or political advantage to accrue to those abolishing the one, or establishing the other?

The history of the legislation of the last quarter of a century regarding the law of marriage forms no exception to the general rule. None of those statute alleviations of the harshness of the common law have reached the root of the evil—the absolute personal dependence of the wife on the husband. The tenderness with which legislatures treat this sole remaining relic of a scheme of dependence, once general, is truly wonderful, espe-

cially as contrasted with the root-and-branch work that has been made with every system of male tutelage. In the fundamental rule of the wife's personal subjection—the most important branch of this subject, and the only one yet considered—no reform has even been attempted. In many States the property rights of married women have been placed on a footing approximating to equality. In none has her personal liberty been secured, or her legal servitude alleviated, except in the most superficial, we might justly say *unintentional* manner. Yet it must be perfectly obvious that personal rights must precede property rights to render the latter of any real avail; the securing of "separate" property to one under strict tutelage to a legal master, is not the thorough work legislators make when they remedy abuses under the sharp eye of the suffering *voter*. Society educates women with a view to marriage, and to marriage only; yet she cannot marry without renouncing that liberty of person and that equality of right which are the boasted inheritance of every American citizen. With the single exception of corporeal chastisement, the same modes of enforcing obedience are open to the husband that are given to the father. Any system that should place a man, arrived at the maturity of his bodily and mental powers, in such a state of subjection, and should bind him, moreover, to hard labor for a mere maintenance, would be reckoned a monstrous tyranny. Regulations made shortly after the war which proposed a far less stringent obedience on the part of the Southern freedman towards the Southern planter, were indignantly rejected by the dominant North. The introduction of Coolie laborers, bound to service for a term of years, has been made a penal offence. Yet a system of dependence which condemns to complete, if not to harsh, servitude a large, industrious, and intelligent portion of the Anglo-Saxon race, continues to be the law of the land!*

* An amusing instance of the superficial way in which this subject has been treated, has appeared of late in the journals opposed to female suffrage: It was gravely affirmed that in several States, where the husband was living in his wife's house, she had the legal power to turn him out into the street. Yet the husband, as we have seen, would in such case have the legal right to take his wife with him by force, could compel her to remain with him, living in the manner suitable to his condition, and could put her into actual confinement if she manifested a disposition to "elope."

II.—THE WIFE'S WANT OF LEGAL AUTHORITY OVER HER CHILDREN.

"A mother, as such," says Blackstone, "is entitled to no power, but only to reverence and respect."* So completely is the existence of the wife merged in that of the husband, at common law, that the whole parental authority vests in him alone. Whatever may be the common practice, the law makes the wife and children co-servants of the legal head of the family.

I—When husband and wife live together.

In no case that we are aware of, is the mother, living with the father, recognized by law as having any legal rights over, or interest in, her children. She may be deprived, at any time, of their society by the father's sending them out to service, without her consent. † The father may, if they desire, bind them out as apprentices, during minority, without her consent.‡ He may also give them away without her consent to various charitable associations incorporated in this state. We find, also, on reference to the "Act Concerning Prisons," that a father can, without consent of the mother, indenture his boys to the State Reform School § where they will be "subject to the same regulations, employment, and restraint, as all other inmates of said school." (Sec. 29.) There might, perhaps, arise a question under the wording of the statute regulating the giving away of children in adoption, whether the mother's consent would be required; and, practically, the court of probate would hardly assent to such a proceeding contrary to her wishes. Only when the husband becomes manifestly unfit, from insanity, intemper-

---

* 1 Bl. Com., 453. † *Day* vs. *Everitt*, 7 Mass., 147. ‡ Rev. Stats., 317, Sec. 93.

§ Rev. Stats., 632, Sec. 26. The word "parent" in this, and other statutes, is construed as referring to the father alone, if he is living; if he is not, and no guardian has been appointed, to the mother.

ance, cruelty or the like, to have control of his children, can a guardian be appointed having custody of their persons. *

Yet, notwithstanding the wife's entire want of legal control over her children, her property is in many ways held liable for their support. By statute, the rents, profits, and interest of the wife's property are liable to be taken by legal process for debts contracted by the husband "for the support of the wife and her children." † In some cases, even, he may use the principal of her property "for the support of the wife, or the issue of their marriage." Our Supreme Court expressly declare that the parental duty of the mother is equal to that of the father, in regard to the support of their children, and that during marriage it is suspended, or postponed, only because her civil existence is merged in that of her husband and because her property is all in his hands. ‡ Even then, should she have a competent separate estate, and her husband none, a court of chancery would decree a maintenance by the mother. §

Parents abandoning and exposing their infant children are liable to punishment in the State Prison. ‖

II—When husband and wife live separate.

Upon separation of husband and wife, the former will be entitled to the custody of their children, unless some positive unfitness, such as insanity, intemperance, cruel treatment or abandonment is proved against him. The common law justified the father in reclaiming his child by the harshest means, ¶ and even in cases where the wife had been obliged to leave him on account of his gross profligacy. ** It is not surprising that

*Rev. Stats., 313. †Rev. Stats., 304, Sec. 20. ‡*Finch* vs. *Finch*, 22 Conn., 411.

§ Do. 417, citing 2 Kent Com., 192. ‖ Rev. Stats., 250, Sec. 32.

¶ In the case of *Rex* vs. *De Manneville*, tried before the Court of King's Bench in 1803, the wife had separated from her husband, on the ground of alleged ill treatment, and kept her child, which was nursing, with her. The husband got into the house where she was, forcibly seized the child, then at the breast, and but eight months old, and carried it away almost naked, in an open carriage, in inclement weather. The wife brought a writ of habeas corpus, but the Court decided that the father was entitled to the custody of the child. 5 East., 221.

** In *Rex* vs. *Greenhill*, (4 A. & E., 624) the mother had left her husband on account of his adultery, and sued for a divorce. She had taken away her three young girls, from two and a half to five and a half years of age, and the husband brought a writ of habeas corpus to obtain possession of their persons It was proved that he was living in adultery with a Mrs. Graham, from whom he refused to part "while uncertain of a reconciliation with his wife." The children were given to the father, Lord Denman complaisantly deciding, that, "although there is an illicit connection between Mr. Greenhill [the husband] and Mrs. Graham, it is not pretended that she is keeping the house to which the children are to be brought, or that there is anything in the conduct of the parties so offensive to decency as to render it improper that the children should be left under the control of their father."

Lord Denman was obliged to confess in the House of Lords that, "he felt ashamed of the state of the law and that it was such as to render it odious in the eyes of the country." A statute was subsequently enacted granting English wives, living separate from their husbands, right of access to, and in some cases custody of, their children.

In frequent and late American decisions the paramount authority of the husband has been fully recognized, but the mother has generally been allowed the custody of infant children, so young that they would be likely to suffer without her care.* In Connecticut, where the wife has sued for divorce, or has attained a decree in such a suit, or where she is living separate "by reason of the abandonment or cruelty of the husband," the court may grant her custody of her children.† It is also provided by statute that in case the husband leave the State and make no suitable provision for his children, at the end of two years after such abandonment a guardian may be appointed, and his parental authority will cease.‡

Our highest court having decided in 1853 that, upon a divorce, mother and father are equally liable for the support of their children,§ our state legislature passed an act in the following year authorizing the court in such case to inquire into the pecuniary ability of the respective parties, and to apportion the maintenance of children accordingly. The divorced wife, as well as the widow, would unquestionably be liable to be treated as a pauper and consigned to the poor house as such, if she failed to maintain her children.‖

One of the greatest sources of annoyance to the wife living apart is owing to the fact that no agreement she can make with her husband, giving her the custody of her children, will bind him so that he cannot afterward reclaim them. In *Mercein* vs. *The People* (3 Hill, 422), it was held that a written agreement to that effect would not prevent the husband's changing his mind and demanding restoration of his children.

---

* *Johnson* vs. *Terry*, 34 Conn., 259. *Dumain et ux* vs. *Gwynne*, 10 Allen, 271. *State* vs. *Richardson*, 40 N. H., 273. *People* vs. *Mercein*, 25 Wend., 102; 3 Hill, 412.

† Rev. Stats., 307, Secs. 38 and 39. In such case, also, the power of appointing a testamentary guardian, devolves on the wife. (Revised Stats., 314, Sec. 73).

‡ Pub. Acts '66—'68, 17.

§ *Finch* vs. *Finch*, above cited.

‖ Rev. Stats., 621, Sec. 19.

III—THE AUTHORITY OF A WIDOW OVER HER CHILDREN.

Upon the death of the husband the wife becomes liable for the support of their children, in case they have no property, and even to be treated as a pauper if she fail to maintain them. But her rights over them are far inferior to those of the father. Minors over fourteen years of age, having no father or guardian, can indenture themselves without their mother's consent.* So late as 1866 our highest court decided that a guardian had a right to the custody of the child in preference to its mother.† Guardians may be appointed by the father by will (Sec. 73); by the court of probate; or by choice of the minor, if of sufficient age, ratified by the court of probate (Secs. 65 and 66).‡ Guardians, so appointed, have the same power of indenturing their wards to the State Reform School, and to masters, without consent of the mother, that the father would have had if alive. While it is expressly provided that the father and master shall not be deprived of their control of the persons of their children, or apprentices, by the appointment of a guardian (Sec. 69), no provision is made in this State, as in Massachusetts, to secure the mother any such right. Nor is she allowed in this State, as in most whose statutes we have examined, any legal preference over others who may apply for guardianship of her children. In short, the power of a widow over her children would seem to be little more than that of any other person in whose hands they might chance to remain at their father's death.§ It is doubtful whether any of the many species of common law guardianship are recognized in her favor by the laws of Connecticut.‖ While maintaining them, she is unquestionably entitled to their services, obedience, and to the wages they earn; but she can not assign their services to a third person, as a father has the right to do.¶ "If it be intended to declare," say the court in a late case, "that the mother is entitled to the earnings of a minor child in the same manner as the father

---

* Rev. Stats., 317, Sec. 94. † *Macready* vs. *Wilcox*, 33 Conn., 321.

‡ Until the passage of a late act (Stats. 1870, p. 463,) guardians were appointed without even notifying the mother.

§ Except in appointing a testamentary guardian, or where the word "parent" occurs in a statute and no guardian has been appointed.

‖ Judge Swift affirms positively that "the mother is never considered as the guardian of her children, unless it be of nursed children, till the age of seven years" (Sw. Dig. 50); and Judge Dutton adds in his edition of that work, "this proposition has been quoted with apparent approbation by Chief Justice Hosmer" (*Kline* vs. *Beebe*, 6 Conn., 500).

¶ 2 Bish. Mar. & Div., Sec. 528.

while alive, was entitled to them, the position cannot be sustained."*

In case a widow marries, her second husband is not liable for the support of his step-children, and the mother loses whatever right she may have before had to the custody of the children of her former marriage. "That right," says a New Hampshire court, "is wholly lost and disappears where the mother surviving, has by a second marriage surrendered that legal discretion which is necessary to render the parental control of benefit to the child." †

IV—Criminal liability of the mother if she interfere with the legal custodian of her children.

Persons having the legal custody of children are protected in their rights by the severest penal laws, which may, it would seem, be enforced against the mother as well as against any stranger who should interfere with those rights. Should any person "eloign," or entice away an apprentice from the service of his master, they become liable to fine, and to imprisonment in the common jail. A still severer statute prevents the enticing away or concealing of children from the father, guardian, master, charitable institution, or adopted parent, who may have a legal right to their custody.‡

V—The peculiar harshness of the law of Connecticut.

Not only has the father or guardian been authorized, in many cases, to deprive the mother of the society of her children, without her consent, and without any misconduct on her part; not only is the right of the widowed mother in her children unrecognized in our legislation; but to the severity of the common law are added certain peculiar features, resting on our statutes and decisions, which materially increase her legal responsibilities, and yet give her no additional rights. By common law she was only responsible for the support of her children when she had the means for their maintenance. By our statute, whenever she becomes free to act, by the death of her husband,

---

* *Pray* vs. *Gorham*, 31 Me., 242. † *State* vs. *Scott*, 10 Foster, 277.

‡ "Every person who shall wilfully and maliciously lead, take or carry away, or decoy, or entice away, any child under the age of twelve years, with intent to detain or conceal such child from its parent, guardian, or other person having the lawful charge or custody of such child, shall suffer imprisonment in the Connecticut state prison, for a term not less than two nor more than five years." (Rev. Stats., 250, Sect. 31.)

divorce from him, or otherwise, she becomes liable to imprisonment in the poor-house, unless she support them, although she has no property whatever. Then, too, by the decision of our highest court, she is declared equally responsible for their support with the father,* contrary to the rule of the common law, as was conclusively shown by Judges Ellsworth and Storrs in their dissenting opinion in that case, and contrary to the usual practice in this country, as appears from Professor Parsons' work on Contracts. † Our courts and legislators seem to have forgotten that if the mother is to be saddled with equal responsibilities with the father, she ought to have some, at least, of his rights; that the law which enables the father, the guardian, the master, the charitable institution, and even the State Reform School, to tear the child from her arms, cannot justly punish her with imprisonment in the alms-house should it come to want.

Least of all does it seem just that if the mother, with nature tempting her so strongly, should entice away her children, "with intent to detain or conceal" them from any of those to whom the law may give their custody, she should be sentenced to the State Prison not less than two years!

The Law of Parent and Child is a very characteristic branch of the Law of Marriage. That beautiful relation, that "motherhood" upon which has been built so much of the rhetoric of the modern advocates of woman's subjection, seems to have been overlooked by our law-makers in their desire to secure the absolute authority of the husband and father. It is a tie that he can break at pleasure, and which, after his death, lies completely at the mercy of the testamentary guardian, and of the judge of probate. If the father tires of the support of his children, he may send them out to service, indenture them to a master, or "surrender" them to the charitable association, without the mother's consent. If father and mother disagree, and a son takes the part of the mother, the father may, in effect, sentence him to the Reform School, to herd with the criminals in that institution; or, after depriving the mother of the society of her children during his life, he may, by will, leave the legacy

* "As a wife, this plaintiff was not legally bound to maintain their children; as a parent, she is, equally with the father." (*Finch* vs. *Finch*, 22 Conn., 417.)

† Vol. 1, p. 308.

of his spite to a testamentary guardian. Then, upon the death of the father—no superior right of indentured master, charitable association, State Reform School, or testamentary guardian, supervening—the mother may apply to the court of probate (before which she has no legal preference) for the guardianship of her own children. If they are girls twelve years of age, or over, or boys of fourteen, they may choose their own guardians.

If under that age, the mother will, by our usual practice, at last attain, while they remain within the limits of the State, to some real authority over the children she has borne and nurtured, and whom she is compelled by law to support. Should the court of probate refuse her request, or should she be living apart from her husband, by divorce, or by reason of his cruelty and abandonment, her rights as a parent are, as we have seen, of an extremely ill-defined and precarious nature. And, finally, by a re-marriage she may forfeit all legal right to the custody of her children, and lose all power to contribute to their support.

The neglect with which the law treats the mother seems even more cruel than its harshness towards the wife. It gives each infinite duties and infinitesimal rights; but when we remember how much more her children cost the mother than the father, we cannot but feel indignant that so much of the gushing tenderness of conservatism should have found its way into poetry, so little into the statute book. We look there in vain for anything approaching a thorough reform. What slight alleviations of any moment our assembled male wisdom has yet devised, are to be found in two sections of our much abused law of divorce.

III.—THE WIFE'S PROPERTY.

At common law all the *personal* or moveable property owned by the wife at the time of the marriage, or which accrued to her subsequently, became the husband's absolutely; and he was entitled to the use of all her *real* or immovable property (land, houses, &c.,) during the continuance of the marriage in any event, and, in case of the birth of living issue, during his life. So, too, all debts due *to* her became his when realized by collection; and, in like manner, he became responsible for all debts due *from* her, and might be sued therefor at any time during the continuance of the marriage, but not afterwards. All debts due from the husband to the wife before marriage were extinguished the moment the parties entered into that relation. Courts exercising what is called *equity* jurisdiction, however, allowed property to be secured by marriage settlement, by gift, or by will, to the *sole* and *separate* use of the wife, apart from any control of the husband, usually with, but in some cases without, the intervention of a trustee. But no property of the wife was ever considered in equity her *separate* estate, unless by express provision of the settlement, conveyance, or will, the husband was deprived of his customary interest in that property. *

I—The wife's property under our present law.

It has not been the design in Connecticut, as in most States where reforms of the old law of marriage have been attempted, to give the wife greater control over her property than she had at common law, but merely to secure to her and her children a maintenance out of it, and to secure them, also, the reversion of the principal after the death of the husband. The legislature began its modifications of the common law in 1845, by exempting the husband's interest in his wife's real estate from attachment for his debts. In 1846, her wages were also exempted

* "The conveyance may be to trustees, for the use and benefit of the wife, or directly to the use of the wife, and then, if necessary, the law will consider the husband to be trustee. When the conveyance is directly to the wife, it must be expressed to be to her separate use, or equivalent words must be used. No precise form of words is necessary; it will be sufficient if the conveyance show it was intended that the husband should have no interest." 2 Sw. Dig., 136.

from attachment, and payment of such wages, or of the investments thereof, to her personally, were made valid. * In 1849, a statute similar to the one now in existence was passed regarding the wife's personal property, limited, at that time, to such as came to the husband in her right by inheritance, during the marriage. During the ten years following, the provisions of this statute were extended to all property owned by the wife at the time of marriage, or accruing to her from any other source whatsoever. During the past ten years no changes of any importance have been effected, except the passage of an act in the interest of the husband, exonerating him from any responsibility for any debts contracted by the wife before marriage, and of a statute in the interest of the wife's separate creditors allowing them to sue her at law. We briefly summarize the existing law as follows:

The husband is still entitled to the possession of all his wife's personal property (except such as may have been placed to her "sole and separate" use in the hands of a trustee). He is entitled to the income of that property during his life, and his interest is not liable to attachment except for debts contracted for the support of his wife and her children. Should he squander the principal of his wife's estate, she may compel him to give bond securing her reversionary interest, or to allow the appointment of a trustee in his place. Should he fail to maintain his wife and children in a suitable manner, and also divert the income of her property from their support, he will not only be deprived of the custody of such property, but of his life interest therein.

The husband may, at his pleasure, convey his interest in his wife's real estate to a stranger for the term of his life, or less, (if living issue has been born of the marriage) but he cannot sell or transfer her personal property, or even his interest therein, without her joining in a written conveyance thereof. It is not a little remarkable, however, that if the wife join in a deed of her real, or in a transfer of her personal property, the power of the husband over the proceeds becomes materially greater than it was over the property while in its original form. In case of the sale of real estate, unless the wife insists upon the investment of the proceeds in her own name they would

* But by our present statute the wife would seem to receive such wages only as the agent of her husband (Rev. Stats., 303, Sec. 19), to whom she may be compelled to pay them over (See *Sherwood* vs. *Sherwood*, 32 Conn., 1, hereafter cited).

seem to become the absolute property of the husband as at common law.* So too should she suffer a sale or transfer of her personal estate, he may expend the whole of the proceeds "for the support of the wife, or the issue of their marriage," without her consent, or may, with her written assent, dispose of them in any other manner whatsoever, thus absolutely defeating her reversionary interest.

The provision of the common law which gave the wife power to act as a single woman in case her husband was a non-resident alien, banished, or transported, has been extended by our statute to all cases of abandonment. She thereby becomes entitled to the custody of her property, and to transact business in her own name. Nevertheless, her temporary independence ceases whenever the husband may choose to resume his marital duty and authority. Even while abandoned, she cannot sell her real estate except upon an order of court showing a total abandonment for at least three years.

The husband may compel the wife to give up all her personal property to him by an application to the court for that purpose, and she will be imprisoned for contempt should she refuse to obey such an order. In the very recent case of *Sherwood* vs. *Sherwood*, (32 Conn., 1,) tried in Fairfield county in 1864, the wife was imprisoned in the common jail for several months because she refused to obey the order of the Superior Court commanding her to give up all her personal estate to her husband; and she only regained her liberty upon the legislature's granting her a divorce!

II—The wife's separate property.

The law regarding the *separate* property of married women, which forms so important a portion of English *equity* jurisprudence. has little practical application to this State. Marriage settlements are almost unknown among us. Mr. Hooker, our State Reporter, declares that, "ante-nuptial contracts, either from ignorance on the part of the woman that they can be made, or more often from a feeling of delicacy on her part which every one can understand, are very rarely made. It is the belief of the writer, from a somewhat extended observation on the subject, that an ante-nuptial contract is not entered into with regard to the wife's property in one case in forty of marriages where there is a substantial property on the part of the wife."

* Rev. Stats., 302, Sec 13; *Hawley* vs. *Burgess*, 22 Conn., 284; *Jennings* vs. *Davis*, 31 Conn., 143.

For a long time our courts refused to adopt the practice of the English court of chancery regarding the *separate* property of married women, except to a very limited extent, or unless such property was secured by the intervention of a trustee; and with the appointment of a trustee generally came great restrictions on the wife's independent control of the estate so secured. In fact, almost the only cases regarding *separate* estates that have found their way into our reports are concerning gifts made by husband to wife, or property over which she has exercised ownership by his permission. Nor does the writer of these articles recollect a single reported case in which the wife has sought relief in a Connecticut court of equity against her husband. Still, such a cloud of legal dust has been raised over the Connecticut law of marriage by constant reference to this branch of equity jurisprudence in newspaper discussions, that it seems necessary to attempt a brief sketch of its provisions, and of the course of Connecticut decisions and legislation regarding it.

Under the English equity system a married woman may exercise almost the full control of the unmarried woman over her property, in the following cases: Where, by marriage settlement or by the express terms of a gift by will or otherwise, property has been conveyed to the *sole* and *separate* use of the wife, or where an absolute gift of property is made to her by the husband, she is given, under the apparent ownership of a trustee or of the husband, full control and power to manage that property as if she were unmarried; as regards real estate, however, her control is limited to its rents and profits, and to the disposition of it by will, subject to the husband's right of *curtesy* should he survive her. This result is effected through the intervention of courts of *equity*, or *chancery* as they are sometimes called, by which the nominal owner (husband or trustee) will be compelled to make precisely such disposition of the property as the wife may direct, whether by way of investment, gift, or sale, and the court will also direct them to pay all the debts she has contracted on the strength of such property, and to perform all contracts she has made with reference to it. In short, they are merely her agents for certain technical purposes, without any real power whatsoever. The usual reason for appointing a trustee is to avoid the risk of a seizure of the *separate* estate by the husband's creditors, to which it would seem to be liable in certain cases if no trustee is appointed; or to avoid the risk of his squandering it himself, if he is irrespon-

sible. Should there be no trustee appointed, the husband will hold the sole and separate estate of his wife as trustee, subject to her direction and complete control like any other trustee. It would appear, however, that the income of the separate property on being paid over by the trustee, or received by the wife, becomes the absolute property of the husband at law, and even in equity he will not be compelled to account for it unless the wife is living apart from him, or objects to his receiving it.*

In most States, recent legislation recognizing the rights of married women has taken the form of an extension of the English equity rules, so as to make all the property of the wife her *separate* estate. The nominal ownership of trustee or husband is also dispensed with, and the wife has substantially the same control of her property after marriage as before. In Connecticut, as we have seen, the course of legislation has been far different; and our law now allows the separate property of the wife to be attached at law for her separate debts as well as in certain cases for the debts of her husband, without enlarging her control over it. †

The early decisions of our courts were hostile to the separate property system. In 1804, it was decided in the case of *Dibble* vs. *Hutton*, (1 Day, 221,) that the English chancery practice which allowed the wife to hold separate property without the intervention of a trustee, "ought not to be engrafted into our chancery system." This case arose in reference to a gift from husband to wife, and exceptions to its sweeping dicta were soon allowed; but the chief point in issue was deemed settled law. Even so late as 1843, in a similar case, Chief Justice Church expresses his approval of the decision of the court in *Dibble* vs. *Hutton*, in the most emphatic terms.‡ Thirteen years later, in 1856, the legislature having in the meantime interfered with

---

* *Winton* vs. *Barnum*, 19 Conn., 175, citing English cases with approval. *Morgan* vs *Thames Bank*, 14 Conn , 99. Clancy's Rights of Married Women, 353.

† Stats., 1869, page 340. Property given by the husband to the separate use of the wife after marriage is undoubtedly liable to attachment for his debts, and it would seem doubtful whether in case of separate personal property coming to the wife from any other source, a creditor, entitled to an attachment under the 20th section of our statute (Rev. Stats., 304) would be affected by the wife's merely equitable separate interest. See *Winton* vs. *Barnum*, 19 Conn., 175.

‡ "The court there seemed to fear, that the innovations which courts of equity in England were making upon the sacred unity of the persons of husband and wife, might, as manners should lead the law, and law the manners, invade our own jurisprudence; and against such an event they intended to protect us. If more loose or liberal views of the nature and legal effect of the marriage relation have been entertained in later times, either by the legislature or the public, until they shall be made to bear upon the courts by some definite legislative act, we must abide by the rules of the common law, which were, without doubt, recognized by all as long ago as the time of the transaction in question." *Fourth Society* vs. *Mather*, 15 Conn., 599.

various acts for the protection of the property of married women, and the English equity rule having been sanctioned in most States and adopted in our own, our Supreme Court overruled the old case of *Dibble* vs. *Hutton*;* but it is not a little amusing to find the court, in the same decision, deprecating as dangerous innovations statutes now universally considered as falling far short of the just rights of married women. † A series of Connecticut decisions, commencing a few years before the case of *Riley* vs. *Riley*, placed our law fully abreast of the English chancery system in regard to the wife's right to hold separate property. Unfortunately, our legislatures have never kept pace with the increasing liberality of our courts in that direction. The General Assembly of 1850, indeed, seemed inclined to follow the equity rather than the common law theory regarding the property of married women, and a few provisions of comparatively slight importance, made by that legislature, still remain on the statute book; but the general tendency has been heavily the other way; and the equity system of separate property rights for married women has never been materially extended by our legislature.

III—The interest of the survivor, on the death of husband or wife, in their respective estates.

In case of the death of the wife, the husband continues in possession of her real estate during his life, provided living children have ever been born of the marriage, whether they survive or not. This interest is known in law as the husband's estate by *curtesy*, and he will have that right even in land held for the *separate* use of the wife. By our statute the husband is also entitled to the use of all his wife's personal property during his life, excepting her *separate* personal estate. ‡ These rights of the husband cannot be affected by any action of the wife. She may, indeed, make a will, but it will only affect the reversion of her estate after her husband's life interest has ended.

---

* *Riley* vs. *Riley*, 25 Conn., 164. "That case," says Judge Ellsworth, "is an anomaly in the law; and its doctrine is not at this time, nor was it then, altogether satisfactory to the profession; and further it has been so materially encroached upon and modified by more recent decisions of this court, and more especially assailed by the wide spread sentiment of the community and the legislation of this and other states, that the doctrine of the case is viewed as an illiberal and obsolete relic of the ancient law of *baron* and *feme*."

† "Whether the statute law has not, in its desire to protect the property of the wife as if it was all to be to her ultimate sole and exclusive use, carried the doctrine too far and given to the wife too much individuality, we will not enquire: experience will be our best instructor." Do., 165.

‡ *Baldwin* vs. *Carter*, 17 Conn., 208.

The wife, on the other hand, only receives the use of a third of her deceased husband's real estate, and not even that, unless she was living with him at the time of his death, or absent for *legal* cause. This right is called the widow's estate in *dower*. In England, and in nearly all the States of this Union, this right is secured by allowing the widow dower in all the real property her husband owned at any time during marriage, unless she has joined him in deeding it away. By a harsh peculiarity of Connecticut law, she is only entitled here to dower in the real estate of which he *died possessed*; so that he has only to convert his real property into personal during his lifetime, or to make final disposition of it by deed instead of by will, reserving a life use of it, to cut off her right altogether.* The widow is entirely dependent on the good will of the husband for whatever she receives from his estate beyond her dower. If he leaves no will, she becomes heir to one-third, or, if he leave no lineal descendants, to one-half of his personal property. The law breaks over its usual, sound policy, to allow the husband to place a singular restriction on her future mode of life. Ordinarily, conditions for the restraint of marriage attached to gifts, or contained in agreements, are held to be void, as contrary to public policy. A husband, however, may leave property to his widow with a condition forbidding her re-marriage attached; and Judge Daggett justifies this extremely common meanness on the part of the husband in the following curious train of reasoning (italics ours):

"It would seem very reasonable, that a man leaving a widow with seven children, as in the present case case, should be permitted to *encourage her*, by suitable provision in his will, to remain single, and not subject his own offspring to *the probable evils of a step-father*, to waste her substance, and thereby render her less able to support and educate them." †

If the normal condition of woman is that of dependence on man, is not the forcing independence upon her, when she has not only herself but seven children to support, a rather poor style of "encouragement?" A widower with seven children soon begins to look out for, and his friends to suggest, another wife, to take care of those children and stop "the waste of his

* In the case of *Stewart* vs. *Stewart*, a man executed a deed conveying all his real estate to his children, and put it into the hands of a third person, to be delivered to them on his death. On the happening of that event, about two years afterward, the deed was delivered, and it was decided that it cut off the widow's dower. 5 Conn., 317.

† *Phillips* vs. *Medbury*, 7 Conn., 576.

substance." Now if the male is the natural "bread-winner" for both sexes, how happens it that a step-mother is such a nice thing to have, and a step-father such a nuisance, in a bereaved family?

The harshness of the common law toward married women, and the injustice of its provisions regarding their property, are universally conceded. The modern legislation of Connecticut on that subject is indeed an improvement, in that it does recognize the principle that a married woman may have property rights; but, as a system, it is irredeemably vicious, from the fact that it is based on the common law theory of dependence. Connecticut is to-day practically behind England in that regard. The wealthier classes in that country have not only contrived the semi-independence of the separate property system, but they take full advantage of that system. Here, the long opposition of our courts, and the continued neglect of our legislature, have prevented it from ever taking root in the habits of society. Other States of the Union, improving upon the old equity system, have granted their married women an independent control of their property far exceeding that conceded in England, yet we hear no complaint of its practical workings. Can it be longer denied that reform took a wrong direction, with us, in 1849? Having two existing models before us—that of the old common law, based on dependence, and that of the equity law with its underlying principle of independence—we chose the worse. Our want of familiarity with the latter and better system easily accounts for our mistake; but, in view of the great progress society and legislation have since been making, our continuance in that error is inexcusable.

Aside from the fundamental defect at the root of existing legislation there are many serious faults of detail. While continuing the wife's dependence, the present law professes to offer her protection; but it turns out, on examination, that the protection offered is of the most imperfect description. No trustee, executor, parent, or guardian, can take possession of the property of his trust without first executing a bond to secure the faithful performance of his duty, and then filing in court an exact inventory of the property received. The husband, however, though named "trustee" in the statute, takes the property of his wife on marriage, without giving any bond to secure its safe custody, or returning any inventory to show its amount.

Starting in married life without any security for her husband's performance of his trust, the wife can only attain such security through the subsequent, hostile proceeding of a petition against him in court—a mode of legal defence excellently calculated to "shut the stable door after the horse is stolen," or to begin a family quarrel which may only end in the divorce court. The evil effect of giving the husband a life estate in the wife's property, instead of a true trusteeship, is forcibly set forth by Mr. Hooker:

"Whatever the husband by a parsimonious support of his family could save out of the income of her property would of course be his own, and he could thus by degrees be laying up a private property for himself. There is, therefore, a constant temptation, if the husband is selfish or meanly inclined, to be stingy in the expenditure of the income for his family so that he may be making a fortune for himself. Hardly any contrivance of the law could have been better adapted to create a state of irritation between the husband and the wife. She is treated by the law as still owning her property while she can receive only such benefit of it as her husband, at his own discretion, and without regard to her wishes, may choose to give her.

"No one can fail to see the injustice of the law, and I believe that that injustice is felt more by the women who suffer it than the really harsher provisions of the common law which gave the whole property absolutely to the husband, and did not delude and tantalize the wife with the semblance of rights."

So too in the statute provisions regarding the re-investment of her property, the husband has been given the most absurd latitude for over-reaching the wife he holds in tutelage. Although the husband's interest in the wife's real estate is carefully exempted from attachment in suits against him, he still has the right to deed it to a stranger for the term of his natural life. In fact, much greater care is taken to protect the wife's property against the husband's debts, than against the husband himself; and it is not surprising that, practically, the present law cheats the married man's creditors oftener than it protects his wife.

No argument can be needed to demonstrate the atrocious injustice of our present law of succession between husband and wife. Not only does the surviving husband take three times as much as the surviving wife, but the former holds his

interest securely, whereas most, in fact all, of the widow's share is defeasible at the option of the husband, and often tagged with a degrading prohibition of re-marriage. The common law presents a very humiliating contrast in that, as in most respects regarding marriage, with the corresponding branch of the jurisprudence of Continental Europe. Just as every traveler observes the selfish brutality of the English as compared with the French or German husband of the lower class, the lawyer cannot but be struck with the harshness of the common law (intensified as it is in Connecticut by our peculiar law of *dower*) as compared with the Continental system of community of profits between husband and wife. The Anglo-American has a sovereign contempt for everything Spanish-American. Nevertheless we must look to some of our States whose law of marriage was derived from that of Spain for the only just and equal rule of succession between husband and wife to be found in this country. In those States, though their laws differ considerably in detail, the fundamental idea is that of the settlement of the affairs of a business firm, upon the death of one of the partners. The capital originally contributed to the general stock by the respective parties goes back to the one, or to the heirs of the one, from whence it came. Unless otherwise provided by agreement before marriage, the husband has no preference over the wife in the remainder of the estate, called the *acquests*, and consisting of property acquired during the marriage from the earnings of the joint labor or capital of husband and wife. This property is treated as the profits of a partnership between equals, and not, as at common law, as the sole estate of a male superior. We look in vain through the various tinkering statutes of States settled from Anglo-Saxon sources to find any such fair and frank recognition of the wife's equal services with the husband in accumulating an estate. The bulk of the accumulated property in Connecticut is acquired, not hereditary; Connecticut wives have done their full share towards its acquisition; yet they are given no legal interest in such acquisitions whatsoever. That despotic, Catholic Spain has given us a lesson of liberality, sufficiently characterizes the condition of our present law.

EVIL RESULTS OF THE WIFE'S DEPENDENCE.

The existing law affords the tyrannical husband every opportunity for oppression; but although public opinion has not yet learned to distrust all forms of dependence, it does hate downright cruelty. Hence the chief practical evils of our law take the form of repression rather than that of oppression,—of a denial to the wife of that freedom of development which is as necessary to the formation of the true woman as to the formation of the true man.

With most women the natural dependence of minority is continued by want of suitable employment till marriage. Then the great majority of our married women become something more than self-supporting; they contribute their full share to the maintenance of a family, and to the accumulation of an estate. A few, of the class which society has relieved of all domestic service without substituting any worthy employment in its place, are justly chargeable with frivolity, extravagance and incompetency. It is chiefly from observation of this class that conservative writers draw their hasty conclusion of woman's *natural* dependence; but the mass of our married women are of no such stamp; and, in general, the Connecticut wife labors as hard as, and more continuously than, the Connecticut husband. It is a notorious fact that she is frequently broken down by hard labor; he, seldom. On what principle then is she deprived of full legal equality with her husband? The just rule of all free society recognizes independence as the reward of self-support; but no sooner has the Connecticut woman, by her services as a wife, earned her freedom, than the Law steps in and rewards her with servitude. Then dependence has its unavoidable effect upon her. The natural capacities of the young wife, who is often the superior of her husband in intellect and culture, never develop. As responsibilities increase, his judgment strengthens and his views widen. Her acquirements, on the other hand, wither from disuse, her judgment is weakened and her views are narrowed by ceaseless attendance to a routine of petty detail, and by habits of reliance on the worldly

wisdom of her spouse and on the spiritual wisdom of her pastor. She inconsiderately adopts and intensifies her husband's political and social hatreds; and, as the married life progresses, the legal inferiority grows into a real inferiority. In cases of peculiar hardship, the wife's temper dulls into that of a drudge, or sharpens into that of a scold; she submits servilely, or revolts noisily and unreasonably, after the manner of all subjects under all despotic rule. Thus, Independence makes the man; Dependence, the woman; and the result is charged upon Nature!

In the same proportion that the present legal marriage relation tends to develop the vices of subjection in the wife, it tends to develop the vices of domination in the husband. Just as Louis XIV was the State under the old French law, the husband is the Family under ours. This monstrous departure from the fundamental principle of free society is justified on the theory that the husband's authority is so tempered by affection as to escape the usual danger of abuse. So far as the marital rule is *oppressive*, such is generally the case; but its *repressive* influence cannot be thus modified. No amount of love and affection on the part of the jailor could make imprisonment a condition favorable to human development. No amount of love and affection on the part of the husband can arrest the evil effect of dependence upon the wife. It is the fundamental vice of all despotic relations that they pervert the powers that are needed for the individual development of the inferior, to minister to the vanity or the selfishness of the superior. We republicans find it difficult to understand how Stuarts and Bourbons could have been educated into believing their personal interests and prejudices of more importance than the welfare of nations; but if some wives have not made as great egotists of their husbands, it is not the fault of their system. The prince by divine right is only worse than the husband by divine right because his subjects are more numerous, and by sharp competition arrive at a higher degree of servility. The feudal court of the Family is small; its lord learns modesty in daily intercourse with equals, outside; but its constitution is as evil, its story of wrong as disgraceful, and the publication of that story as severely repressed, as in those grander despotisms it is part of our education to hate.

Another evil result of our present law arises from the fact that, by forcing the wife to give the husband more than he has a moral right to ask, it tends to produce that ingratitude on his part, and that disappointment on hers, which are the usua

penalty of over-generosity. Love often has most unaccountable beginnings, but its continuance is usually dependent upon esteem and respect. Where the law gives not only the wife's person but her property and her children unreservedly into the hands of the husband, such is the frailty of human nature that he is extremely apt to undervalue that for which he has not paid the full price. Failing in due gratitude, he also fails in due esteem and respect, and so the proverbial devotion of the lover is quickly succeeded by the proverbial indifference of the husband. Upon this rock the happiness of many a marriage is wrecked at the outset. Nor can we wonder, when the unoffending wife so often suffers that cruel humiliation which is the notorious lot of the mistress, and finds that by reserving nothing she has not only earned ingratitude, but turned love into contempt.

If such are not, in general, the evil results of marriage, it is because the law is practically repudiated, because the husband has wisely conceded to the wife the true relation of an equal instead of placing her in the legal relation of an inferior. Such is the wholesome tendency of our times; but the husbands who do not make a merit of their concessions, and demand occasional obedience, are probably very few.

In no other domain is the evil effect of woman's dependence more severely felt than in that of morality. Personal purity is the unquestioned attribute of the American female; but not of the American male. Still, license does not often assume with us its vilest shape of libertinism. That species of vice, indeed, is punished with a savageness peculiar to ours, of all civilized nations. A wise morality, therefore, will hardly concern itself with the virtue of woman, but with the vice of man. The "social evil," as it is termed, is the one growing crime against chastity, and the prevalence of that crime is to be directly traced to the dependence of woman. In the first place, this vice is most common among those classes in which marriage is to the female a real as well as a legal dependence. The farmer, laborer, and artisan, are not the chief sinners in this regard; but rather business and professional men, clerks, &c.,—in general, the classes which earn a bare livelihood in our cities. The chief inducements to this vice are, single life or late marriage; scarcity of female employment; and the wife's powerlessness to enforce the prime condition of the marriage contract.

It is a mistake to suppose that men often remain single, or

marry late, from choice. To many, marriage is simply an impossibility; they cannot afford the double or triple expense of living it necessitates. In compelling such men to unwilling celibacy, society ensures their moral "ruin." The one possible remedy for this evil is through some mode of enabling the wife to contribute by remunerative labor to the support of the family—through the education of girls to business, to professions, or to trades, with the expectation that they will continue in such employment after marriage. This will also remove the chief stumbling block in the way of the single woman's doing first-class work—the expectation that with marriage such work must be abandoned for the comparatively unremunerative duties of housekeeper, seamstress, and nurse. The introduction of machinery has narrowed the domestic sphere, while the progress of refinement has increased its expense. Without here considering the question whether the province of "wife and mother," especially that parental duty which the "husband and father" so cheerfully resigns, affords sufficient scope for her natural powers, it is evident that the want of economy of the present system is fast proving its ruin. Unless the co-operative kitchen, the co-operative sewing establishment, the co-operative nursery, or some conveniences of the sort, enable the educated wife to earn the high wages of skilled or intellectual labor, infrequency of marriage, with its attendant vice, will prove an insoluble social problem.

The statistics of prostitution show that want of employment at living rates furnishes a large, if not the largest, female contingent to this species of vice. With freedom of action, and with an unlimited sphere of employment, would vanish this shameful necessity—the darkest blot on christian civilization.

From the fact that eligible husbands, especially in the upper walks of life, are fewer than eligible wives; from the fact that the husband is expected to be the chief support of the family; and from the still more controlling fact that celibacy does not leave man's life so purposeless as it does woman's, it results that the parties to the marriage relation do not start upon anything like an equal footing. The wife is in no condition to demand those terms to which equality would have entitled her. One terrible fundamental unfairness is particularly manifest: that personal purity which is a pre-requisite in her case is not so in that of the husband. The monstrous inequality with which marriage begins, increases with its continuance. Infidelity on the part of the wife brings death to her lover, worse than

death to herself; but this is no enforcement of chastity—it is only the punishment of a trespass on vested rights, to which the most licentious husband is entitled equally with the most virtuous. So complete, on the other hand, is the wife's dependence, that there grow up habits of subserviency which unfit her for "vindicating the purity of the marriage relation." Implicit obedience remains a duty till the utmost limit of forbearance is reached. Then she is expected to throw off the habits of years, and to fight a great battle, under every disadvantage, against one to whom she has been taught to look up as her "head, even as Christ is the head of the Church." It is not her fault that under such circumstances she fails to do her duty oftener than she performs it. Society affords the husband every opportunity of hiding his disgrace, it even justifies the wife in shutting her eyes to it, while it goads him on to murder in revenge for hers. This most degrading result of the wife's dependence also removes the greatest natural check on immorality. Real independence, and sufficiency of employment, would enable the wife to exact from the husband some approach at least to the purity he requires of her.

One of the strongest proofs of the evils of our marriage law is to be found in our divorce records. The uniformity with which wives petition for separation in the proportion of two to one, proves that their more frequent resort to that extreme measure results from some uniform pressure of necessity, and not from accident. The following table is compiled from the latest reports of our State Librarian:

Year.	Husband petitioner	Per Cent	Wife petitioner.	Per Cent.	Total
1866	148*	36.4	259*	63.6	488
1867	122*	30.3	281*	69 7	459
1868	160	33.5	3 8	66.5	478
1869	164	33 4	327	66.6	491
	594	33.4	1185	66.6	1916

No one familiar with the law of marriage will be surprised at the foregoing exhibit. Where a husband has been guilty of "such misconduct as permanently destroys the happiness" of his wife, "and defeats the purposes of the marriage relation," her condition is simply intolerable. The well-meaning clergymen who are endeavoring to make the marriage relation perma

* Fairfield County not reported.

nent should remember that it ought first to be made just. In Christ's time, the law of divorce degraded the wife; in our time, it is her only refuge from degradation. If Christian ministers will note this difference, and will follow the spirit instead of "sticking to the letter" of the divine law, they will pray for the wife's legal emancipation rather than for her legal coercion—they will make divorces infrequent by making them unnecessary.

The arguments most usually urged in behalf of the existing system of dependence are: that the wife's subjection is the result of divine ordinance; that dependence is the natural condition of woman; that even if the wife were the natural equal of the husband, some headship of the family is a practical necessity, and more properly devolves on the husband.

The biblical argument in favor of woman's subjection has been so thoroughly considered and fully answered in the first tract of this series that further reply seems unnecessary. It is sufficient to say that the same strict construction which demands female dependence would also justify polygamy and slavery, would condemn Total Abstinence as contrary to divine example, and would prescribe celibacy as a necessary condition to exalted piety.

The argument that the dependence of woman is *natural*, is simply a mistaken inference from the fact that it is usual. No such inference is necessary, for the fact of dependence most naturally follows from the long political predominance of Force. Political and social dependence is even now the general lot of man. Nevertheless, independence justly claims the preference, because it produces a superior type of manhood. It is equally incontestible that independence, as far as it has been permitted, produces a superior type of womanhood. From the Turkish woman up to the American woman the sex rises steadily in esteem as it rises towards independence. It is a very common assumption that the superior respect with which the American woman is treated, is owing to the superior politeness of the American man. The more natural explanation, that our women are treated with more respect because they deserve more respect, does not readily occur to male conceit. Hence men fall into the great error of supposing that the respect they pay woman is a favor, not a debt. The simple fact is that the American woman has learned the lesson of greater freedom in greater self-respect—to be surely followed by the increased respect of others, whether willing or not. Experience proves

that, from queen to seamstress, woman meets responsibility bravely, and, for the most part, successfully. It seems to prove, even, that sudden and heavy responsibilities do not break down untried women as they break down untried men. Least of all does experience justify the monstrous slander that female purity is a creature of male protection, which will be sacrificed if that protection is withdrawn! When vice claims to be the natural custodian of virtue we may reasonably suspect an improper motive; and, in this case, the motive is sufficiently obvious; chastity is the natural foundation on which the marriage relation is built, the pre-requisite to its formation, and the condition of its continuance; woman, of her own free will, fully complies with that term of the contract; man bullies or cheats her out of the performance of the condition on his part, and, to hide his default, avers that *her* purity is only the result of *his* compulsion. Even pure men often unthinkingly repeat this brazen assumption of vice.

Where neither religion nor nature demand the wife's subjection, justice will not readily concede it as a necessity of state. The argument that equal right must be sacrificed to secure harmony, is not only the stalest plea of despotism, but inconsistent with the American type of government. Our State and National constitutions divide supreme rule between three, coordinate departments, with the avowed purpose of avoiding that very unity of power which is demanded for the husband in the family. No reason can be shown for giving the husband sole control of matters of such prime importance as residence, social intercourse, and mode of life. Those are arranged, in the first instance, by mutual agreement, and should not be changed except upon common consent. If either deserves the absolute control of the children while young, it is the wife; when older, any exercise of authority by one parent, against the known wishes of the other, cannot but be as mischievous as it is unjust. Above all, when the time has come for pushing the young birds out of their family nest, disregard of the wishes of the mother is an inexcusable cruelty. Nor is there any reason why the wife should not have that legal interest both in the control and in the proceeds of the marriage partnership to which her unremitting toil entitles her. Even in those classes where the wife's burden is lighter, it is unwise to lessen her interest; were the husband obliged to yield to the wife the confidence of a real partnership, there would be fewer cases of thoughtless extravagance on one side, and of selfish personal

expenditure on the other. In no other business firm is a single partner given absolute control of the common property and considering also its additional bond of affection, that feature of the marriage partnership must be as unnecessary as it is unusual.

If the foregoing views are correct, and the fundamental principle of the present marriage relation is wrong, the plain remedy lies in the substitution of independence for dependence, of equality for subjection. The wife should be given entire control of her own person, joint authority with her husband over the children they nurture, and over the property they accumulate. As has been before observed, reform in this country has taken the shape of an extension of the English separate property system. Vast improvement as that system is on the common law, it offers no such complete remedy of existing evils as is generally assumed. The married woman of property has that property reserved from marital authority; but receives no further relief. The married woman who has no property remains bound, as of old, to labor for her husband for board wages. If the marriage venture is successful, she is secured no share in *his* earnings; but if unsuccessful, she endures an equal share of *his* poverty; and, should he die, she will be confined in the poor-house if she fails to support *his* children. A system which leaves so large a portion of its work undone can hardly be the end of reform!

The enlargement of woman's sphere of employment so as to admit of the free development of her powers in every practicable direction, is a conceded necessity of the times. The only important hindrance the law offers to the single woman's progress, is that of disfranchisement; but with marriage come crippling legal disabilities which necessarily terminate any career of independence she may have begun. How far marriage is a natural disqualification for all but domestic employment, can never be known as long as the law interferes so roughly. A wise legislation would sweep away all existing barriers; would concede to the wife the independence she earns, in the Family; and would trust nature to limit her sphere of usefulness, outside of it. Then, at last, being no longer a bond-woman, the wife may compete with the free man, and may rise to her natural position as leader of that inexperienced minority of her sex who are struggling for profitable employment.

The grosser evils of our marriage law cannot long escape correction; but experience hardly justifies the expectation that legislatures composed mainly of husbands, and representing only males, will ever abandon the system of dependence by which they seem to profit. There is, indeed, no active intention to oppress; on the contrary, individual cases of hardship meet with ready sympathy and relief; but the *vis inertiæ* of selfishness has hitherto offered an insuperable obstacle to a thorough redress of the fundamental wrong.